

**BOARD OF APPEALS CASE NO. 5082**

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**BEFORE THE**

**APPLICANTS: Taylor's Point, Inc. and  
Taylor's Point LLC**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit a 6.6 foot high  
fence within the front yard setback;  
428 Shore Drive, Joppatowne**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 9/13/00 & 9/20/00**

**HEARING DATE: October 30, 2000**

**Record: 9/15/00 & 9/22/00**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Taylor's Pointe, Inc. and Taylor's Pointe, L.L.C. (hereinafter, Taylor's) are seeking a variance pursuant to Section 267-24B(1) of the Harford County Code to allow an existing fence to be more than 4 feet in height above ground elevation in the front yard (6.6 feet proposed).

The subject parcel is located at 428 Shore Drive, Joppatowne/Rumsey Island 21085 and is more particularly identified on Tax Map 69, Grid A2, Parcels 177,178.180.267. The subject parcel consists of 17,134 square feet, is zoned R3 Urban Residential/CA Critical Area and is entirely within the First Election District.

Mr. Ronald W. Parker appeared as representative and owner of Applicant entities. Mr. Parker explained that Taylor's appeared before the Board of Appeals in 1999 to obtain a variance for the gatehouse located at the entrance to Taylor's Pointe (Case No. 4946). During those hearings the Applicant presented renderings of the proposed gatehouse and what has become the existing fence. The Applicant, and apparently the Department of Planning and Zoning, believed that the fence was part of the approval granted in Case 4946. A permit for the fence was issued and the fence is presently constructed. The fence connects to the brick gatehouse structure and is approximately 6.6 feet in overall height. Photographic exhibits show the fence to act as a privacy screen at the entrance to the facility which is aesthetically tied to the brick gatehouse structure. The lot is a corner lot, thus two front yard setbacks are created. There is an identical fence constructed directly across from this one but it is on a side yard. There is no obstruction of sight distance created by the fence. The witness opined that it would be both a financial and aesthetic hardship if the fence had to be removed and that he had relied in good faith on Case 4946 and the permit issued in constructing the fence.

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Mr. Harry Kucin appeared and testified that he lived in the development. He stated that he liked the appearance of the fence and the security it provided. He also thought it would be unreasonable to require the fence to be removed, particularly since it has no adverse impacts at all.

The Department of Planning and Zoning, in its staff report prepared in this case dated October 23, 2000 said of the fence: “ The fence is an extension of the approved gatehouse that was approved by the Board. The proposed fence was shown on the site plan used in Board of Appeals Case #4946 (Attachment 10). If approved, the fence should not adversely impact the intent of the Code and/or surrounding neighborhood. The additional height of the fence does not appear to have an adverse impact on the sight distance at the road intersection.”

### **CONCLUSION:**

Section 267-24B(1) provides as follows:

Fences and walls may be located in required yards in accordance with the following:

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.

Section 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Hearing Examiner first finds that the statute permits fences of heights up to 8 feet so there is a legislative determination that fences of up to eight feet are presumptively compatible with other fences and structures normally associated with this zone.

Further, there was a great deal of confusion regarding the decision rendered in Case 4946 and whether this particular fence was approved as part of that decision by the Board. A review of the exhibits presented as part of the record in Case 4946 clearly shows a 6.6 foot fence identical to the one at issue and in the identical location, however, the request for a gatehouse approval did not include a request to approve the fence. The Hearing Examiner's decision in that case does not mention the fence and the assumption is that it was not considered for approval.

However, the Hearing Examiner is convinced that a 6.6 foot fence is compatible with other fences normally approved for this zone (the statute allow fences up to 8 feet) and that this fence will not adversely impact the purposes of the Code or the surrounding neighborhood. The property is a corner lot, creating two front yard setbacks, sufficient to sustain a conclusion that the property is topographically unique. The Applicant applied for and obtained a permit to erect the fence with all parties relying on the approval granted in Board of Appeals Case 4946, therefore, it is clear that this is not a hardship of the Applicant's own making.

The Hearing Examiner recommends approval of the request, subject to the Applicant's modification of the fence permit to accurately reflect the actual height.

Date    NOVEMBER 22, 2000

William F. Casey  
Zoning Hearing Examiner